

REMARKS

Claims 1, 3-5, 20, 22 and 24 are amended herewith. No new matter is presented. Thus, claims 1-35 are pending and under consideration.

REJECTION UNDER 35 U.S.C. § 112

Claims 1-6 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite because "the witness" recited in line 12 lacked antecedent basis. Applicants have amended claims 1 and claims 3-5, 20, 22, and 24 depending upon claim 1, to correlate the claims language with the updated recitation of "witness receiving means" (see claim 1, line 8). Applicants submit that the amendments ensure the required definiteness. Accordingly, Applicants respectfully request withdrawal of the rejection.

REJECTION UNDER 35 U.S.C. § 103

Claims 1-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,794,207 to Walker et al. (hereinafter Walker).

In the outstanding Office Action, the position that Walker anticipates the claims in the present application is maintained. Applicants disagree with this position. During prosecution, Applicants have amended the claims to emphasize features distinguishing the claims over the prior art. Applicants' amendments and arguments are rebutted with assertions of obviousness. Applicants believe that Walker does not render obvious the features of the claims, because the purpose and conditions in Walker are fundamentally different than the purpose and conditions for the system in the present application. This fundamental difference makes adding to Walker some features asserted as obvious to be meaningless.

Walker is directed to a method and an apparatus to perform bilateral buyer-driven commerce. Walker's invention allows prospective buyers of goods and services to communicate a binding purchase offer globally to potential sellers, for sellers conveniently to search for relevant buyer purchase offers, and for sellers potentially to bind a buyer to a contract based on the buyer's purchase offer. For example, a controller included in the apparatus receives binding purchase offers from prospective buyers. The controller makes purchase offers available globally to potential sellers. Potential sellers then have the option to accept a purchase offer and thus bind the corresponding buyer to a contract (see, Walker, Abstract).

The present general inventive concept relates to a witness system and method that takes advantage of electronic data exchange to perform efficient distribution and account settlement (accounting) processes between selling and buying companies. A buying company's computer makes documents according, illustratively, to delivery vouchers or order vouchers, and sends the documents to a selling company's computer via a notarization authority. The selling company compares authentication documents with, for example, delivery vouchers or order vouchers that the selling company itself has issued, and, after checking for substantive errors and determining that the contents of the documents are correct, executes a confirmation response with respect to the notarization authority. The notarization authority registers the documents in a witness server's receipts detail table and notifies the buying company and the selling company that the notarization authority has authenticated the documents. This structure makes possible generating accurate detailed payment statements when, for example, a detailed payment statement is made or a fund transfer is executed based on confirmed data. Furthermore, the checking of said detailed payment statement by a buying company and a selling company is made simpler through reference to the above-described witness system server (see Abstract of the present application).

Walker's system/method performs in a situation before a moment of a sale, in which situation a buyer sends information towards multiple sellers relative to a targeted product and a seller among the multiple sellers may respond to the buyer depending on the product availability. Walker's system/method provides means leading to a sale between the buyer and the seller who responded based on the buyer's information. In contrast, the method/system claimed in the present application, performs after the moment of the sale ("sales data about one or more items sold by a seller to a buyer", claim 34) to ensure efficient distribution and account settlement (accounting) processes between the seller and the buyer.

In view of the above-mentioned difference between the purpose and conditions of Walker and the present general inventive concept, the assertions of obviousness made in the outstanding Office Action are flawed. For example, in the outstanding Office Action, it is conceded that Walker does not teach the claim 1 feature of "confirmation document making means for making a confirmation document by a buyer for each one of a plurality of seller records." It is then argued that the system disclosed in Walker could have been modified to include a plurality of seller records, but the confirmation aspect of the above-recited feature of claim 1 is not addressed. Since the sale has not been yet agreed upon in Walker (i.e., a binding decision is the final outcome of the system/method in Walker) there is no reason for the buyer to

confirm the seller's records or information. Asserting that the "confirmation document making means for making a confirmation document by a buyer for each one of a plurality of seller records" is obvious based on Walker makes no sense prior to achieving a binding decision between the buyer and the seller, as it is the situation in Walker.

In the Amendment filed on November 2, 2005, Applicants amended independent claims 1, 7, 17, 25-29 and 35 as amended recite that the present invention includes creating or making a "confirmation", "notarization", or "confirmatory" document for "a selected sale and corresponding sales data of at least one item among seller records" ("a corresponding voucher" in claim 35). Similarly, independent claim 15 recites that a notarization document is created by the seller for "a selected sale and corresponding sales data of at least one item from a corresponding buyer record." Independent claim 34 was amended to recite "payment object indicating a selected sale and corresponding to the sales data of at least one item among the plurality of seller sales records" that is created upon receipt of "a plurality of seller sales records." Independent claim 36 was amended to recite, "automatically determining delivery vouchers of the seller corresponding to the selected sale of the seller records" and "authenticating the confirmation document with the delivery vouchers." Applicants submit that these features distinguish the independent claims over Walker, and that Walker does not render the recited features obvious at least because of the context of operation in Walker.

Additionally in the Amendment filed on November 2, 2005, Applicants argued that the feature "said seller checks said detailed payment statement against documents stored in memory according to said memory means" recited in claim 10 is not disclosed by Walker. In the outstanding Office Action, it is asserted that "[it] is well known in business to double check statement information with other information, to insure that there are no mistakes." The Applicants respectfully traverse this statement and demand the Examiner to produce authority for the statement. The Applicants specifically point out the following errors in the Examiner's action.

First, the Examiner uses common knowledge ("well-known") evidence for the rejection of claim 10. The Applicants respectfully traverse the Examiner's statement and demand the Examiner to produce authority for the statement. As explained in the M.P.E.P. § 2144.03,

any facts so noticed should... server only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground for rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the

principal evidence upon which a rejection is based.

Second, the noticed fact is not considered to be common knowledge or well-known in the art. In this case, the limitation is not of notorious character or capable of instant and unquestionable demonstration as being well-known. Instead, this limitation is unique to the present invention (see, M.P.E.P. § 2144.03(A) (the notice of facts beyond the record which may be taken by the Examiner must be “capable of such instant and unquestionable demonstration as to defy dispute”). In particular, the “other information” phrase is vague and renders the statement indefinite.

Third, there is no evidence supporting the Examiner’s assertion (see, M.P.E.P. § 2144.03(B) (“there must be some form of evidence in the record to support an assertion of common knowledge”).

Fourth, the Examiner appears to be basing the rejections, at least in part, on personal knowledge. The Examiner is required under 37 C.F.R. § 1.104(d)(2) to support such assertion with an affidavit when called for by the Applicant. The Examiner is called upon to support such assertion.

Further, even if the Examiner’s assertion and rejection based on common knowledge is valid, the present invention is distinguishable as discussed above.

ENTRY OF RESPONSE UNDER 37 CFR §1.116

Applicants request entry of this Rule 116 Response and Request for Reconsideration because it is believed that the amendment of claims 1, 3-5, 20, 22, and 24 puts this application into condition for allowance and should not entail any further search by the Examiner since no new features are being added or no new issues are being raised.

The Manual of Patent Examining Procedures sets forth in §714.12 that “[a]ny amendment that would place the case either in condition for allowance or in better form for appeal may be entered.” (Underlining added for emphasis). Moreover, §714.13 set forth that “[t]he Proposed Amendment should be given sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified.” The Manual of Patent Examining Procedures further articulates that the reason for any non-entry should be explained expressly in the Advisory Action.

CONCLUSION

For at least the above-mentioned reasons, the independent claims and claims depending from the independent claims are patentably distinguishable over Walker. Reconsideration of the rejections is respectfully requested.

If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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